

CHAPTER 20 ENVIRONMENTAL ENHANCEMENT AND MITIGATION (EEM)

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CHAPTER 20 ENVIRONMENTAL ENHANCEMENT AND MITIGATION (EEM)

20.1 INTRODUCTION

The purpose of the Environmental Enhancement and Mitigation (EEM) program is to mitigate the environmental impacts of new or modified public transportation facilities above and beyond that required by the environment document through the provision of State grants. The EEM program was enacted under AB 471 (Katz) in 1989 and codified in Section 164.56 of the Streets and Highways Code. The Legislature is authorized to allocate \$10 million annually to local, State, and Federal agencies, and non-profit entities over a ten year period (from fiscal years 1991-92 to 2000-01). Funding for the annual EEM program is subject to the appropriation of funds in the State Budget Act.

20.2 ELIGIBILITY CONSIDERATIONS

ELIGIBLE APPLICANTS

Any local, State, or Federal agency or nonprofit entity is eligible for EEM grants. Eligible nonprofit entities are those classified under Section 501(3) of the Internal Revenue Service Code. The agency or non-profit entity is not required to be a transportation or highway related organization. However the organization must demonstrate, to the satisfaction of the Resources Agency and Caltrans, the ability to develop and implement the proposed project. Two or more agencies/entities may participate in a project.

ELIGIBLE PROJECTS

EEM projects must be directly or indirectly related to the environmental impact of modifying an existing transportation facility, or construction of a new or related transportation facility. A transportation facility is defined as a public street, highway, mass transit guideway or their appurtenant features (e.g., park-and-ride facilities, high-occupancy vehicle lanes, transit stations). Additionally, the transportation facility to which the environmental impacts relate must be: 1) a project where construction began after January 1, 1990; 2) a project that is not yet under construction but is included in an adopted State Transportation Program or in a locally adopted and certified capital outlay program. If a transportation facility is constructed in separate and distinct phases, each phase may be considered a separate project for purposes of this definition, provided that each phase provides an operable transportation improvement. All eligible projects must fall within one of the following project categories:

- **Highway Landscape and Urban Forestry** -- These projects are designed to offset vehicular emissions of carbon dioxide through the planting of trees and other suitable plants. Projects may be within or outside the right of way of the related transportation facility. Projects within the right of way, however, are not intended to supplant landscaping which would normally be funded by the responsible public agency. EEM grant funds are not be used for this purpose.
- **Resource Lands** - These projects involve the acquisition, restoration or enhancement of resource lands to mitigate the loss of, or the detriment to, resource lands lying within or near the right of way acquired for proposed transportation improvements. Resource lands include natural areas, wetlands, forests, woodlands, meadows, streams or other areas containing fish or wildlife habitat as well as features of archaeological or historical value. Enhancement of resource lands may include the restoration of wildlife corridors.
- **Roadside Recreational** - These projects provide for the acquisition and/or development of roadside recreational opportunities, including roadside rests, scenic overlooks, trails, trailheads, sno-parks (see Public Resources Code, Section 5091.02), and parks.

ELIGIBLE COSTS

Only direct project-related costs incurred during the project performance period, specified in the project budget and grant agreement, are considered eligible for reimbursement. All such costs are paid on a reimbursement basis and must be supported by appropriate invoices, purchase orders, canceled warrants, and other records. Indirect project costs such as general program administration and general overhead as well as costs incurred outside the project performance period such as maintenance are not eligible for reimbursement. However, the services of Applicant employees directly engaged in project development/implementation are eligible.

The Applicant may start reimbursable preliminary project work any time after the project is adopted into a State program. ;Costs incurred in advance of this initial approval by the California Transportation Commission (CTC) are not eligible for reimbursement. To ensure that State funds are available for the project, the Applicant-State Agreement must be signed, approved and executed (thereby encumbering funds) before expenditures are incurred. Any work performed prior to the executed agreement is performed at the Applicant's risk.

The Resources Agency is responsible for preparing the list of recommended project proposals and submitting the list to the CTC. The Resources Agency may recommend that a project be partially funded through general or specific line-item reductions. In such cases, the Applicant must use non-grant sources of funding to complete the approved project.

20.3 PROJECT APPLICATION

Local, State, and Federal agencies and nonprofit entities interested in receiving applications for State EEM grants should contact the Resources Agency at the following address:

Resources Agency
Suite 1311
1416 Ninth Street
Sacramento, CA 95814
(916) 653-5656

Annually, in late August, the State Resources Agency mails out applications to all previously registered Applicants statewide. By mid to late November, all interested Applicants must submit their completed applications to the Resources Agency. In April of the following year, the Resources Agency forwards a list of projects recommended for funding to the CTC. All project Applicants are notified of their project status at that time. During July, the CTC will adopt the annual EEM Program, identifying the projects to be funded from that fiscal year's program. A listing of "EEM Program Critical Dates" for the 1996-97 grant cycle is provided in Exhibit 20-A. Critical dates for future cycles will vary somewhat.

20.4 RESPONSIBILITIES OF KEY PARTICIPANTS

LOCAL, STATE, AND FEDERAL AGENCIES, AND NONPROFIT ENTITIES

Eligible projects are conceived and initiated at this level. Applicants must provide assurance, to the satisfaction of the Resources Agency and Caltrans that they are capable of performing the requisite tasks of the program. Each Applicant must also submit a signed resolution (see Exhibit 20-B), as part of their application package, from their governing body approving the project as a candidate for the EEM Program.

RESOURCES AGENCY

This State agency is directly responsible to the legislature for project evaluation. Its responsibilities include:

- establishing program procedures and criteria
- developing and maintaining a mailing list of interested local, State and Federal agencies and nonprofit entities
- receiving grant applications
- evaluating and ranking the applications
- preparing, for CTC consideration and adoption, a list of project applications recommended for funding. (This list includes projects which in total exceed the available funding for the program, therefore the CTC must reduce this list to a fundable program of projects)
- approving major changes in project scope

CALIFORNIA TRANSPORTATION COMMISSION (CTC)

The CTC has primary responsibility for programming and allocating funds for the EEM program. The responsibilities include:

- reviewing the Resources Agency's list of candidate projects
- approving an annual EEM Program

- ensuring that the proper environmental documentation has been completed prior to allocating project-specific funds
- allocating funds to approved projects in the EEM program

CALTRANS HEADQUARTERS, OFFICE OF LOCAL PROGRAMS

The CTC has delegated the responsibility for EEM program and project administration to Caltrans. This responsibility has been assigned to the Office of Local Programs (OLP). The OLP is responsible for:

- processing Applicant requests for allocation of State funds (CTC “second vote”)
- developing and processing Applicant-State Agreements (Exhibit 20-C)
- developing and processing Agreements Declaring Restrictive Covenants (ADRC) (Exhibit 20-D) (only for projects involving acquisition of “real property rights”)
- providing guidance to Caltrans District EEM Coordinators on program policies and procedures
- monitoring project status and the expenditure of EEM funds on a statewide basis

CALTRANS DISTRICTS

Caltrans District Directors have the primary responsibility for administering the EEM program at the local level. The District Director is assisted by the Caltrans District Local Assistance Engineer (DLAE). The responsibilities of the DLAE include:

- commenting on candidate projects to assist the CTC in determining the projects to be funded. Areas of concern include but are not limited to:
 - environmental documentation
 - impact on State-owned or maintained facilities
 - conformance with plans for future facility construction or modification,
 - comments on specific items such as amount of water required for a proposal and its availability
 - conflicts with State, local, or Federal law
 - maintenance responsibilities.
- coordinating the processing of the agreement package for projects involving the acquisition of “real property rights”
- inspecting the completed project and recommending final payment.

20.5 PROJECT EVALUATION AND SELECTION

MANDATORY REQUIREMENTS

All candidate EEM projects must meet the following minimum requirements:

- demonstrate a direct or indirect relationship with the environmental impact of modifying an existing or constructing a new transportation facility
- provide mitigation or enhancement above and beyond the mitigation required as part of the transportation projects to which they are related

- be compatible with and not interfere with the operation or safety of the transportation facilities when the mitigation measure is in or near the right of way
- not limit currently planned or anticipated future improvements to the transportation facility

EVALUATION CRITERIA

All candidate EEM projects are evaluated by the Resources Agency. All projects are evaluated using a general criteria (up to 50 points) and the appropriate project category criteria (up to 50 points). A maximum of 100 points may be assigned to any one project.

GENERAL EVALUATION CRITERIA

The general evaluation criteria consists of:

- Increased Mitigation and Enhancement (0-20 points)
- Project Readiness (0-15 points)
- Recognized Statewide Resources Priorities (0-5 points)
- Other Contributions (0-10 points)

PROJECT CATEGORY CRITERIA

Highway Landscape and Urban Forestry Project

- Cost Effectiveness (0-20 points)
- Sustainability and Suitability (0-20 points)
- Other Benefits (0-10 points)

Resource Lands Projects

- Important Resource Values (0-30 points)
- Sustainability (0-10 points)
- Other Public Benefits (0-10 points)

Roadside Recreational Projects

- Need for the Project (0-25 points)
- Sustainability (0-15 points)
- Other Benefits (0-10 points)

A complete description of the above evaluation criteria is contained in the application package developed by the Resources Agency.

20.6 FUNDING CONSIDERATIONS

MAXIMUM GRANT AMOUNT

For the 1997-98 fiscal year it is anticipated that grants for individual projects generally will be limited to \$350,000.00. Under special circumstances, applications may be recommended for awards exceeding this amount, if warranted by the following conditions:

- project involves the acquisition of resource lands of substantial size
- combined benefits would be realized in more than one project category
- mitigation would be achieved to offset the environmental impacts of more than one related transportation project
- current grant cycle presents an immediate, one-time opportunity for maximum mitigation benefits that could not be achieved in the future.

NORTH/SOUTH SPLIT

In keeping with the provisions in Sections 187 and 188 of the California Streets and Highways Code, an attempt will be made to allocate 40 percent of the total amount recommended to projects in the northern counties and 60 percent of the total amount to projects in the southern counties. The southern counties are: San Luis Obispo, Kern, Mono, Tulare, Inyo, Santa Barbara, Ventura, Los Angeles, San Bernardino, Orange, Riverside, San Diego and Imperial. All other counties are considered northern counties for purposes of the EEM Program.

20.7 RIGHT OF WAY CONSIDERATIONS

If an EEM project involves acquisition of “real property rights” and Federal reimbursement is requested for any phase of the project, all right of way matters must comply with applicable Federal and State laws and regulations (see Chapter 13 of the *Local Assistance Procedures Manual*).

If only State funds are involved, the basic requirements of the State Uniform Act must be followed:

- the real property is appraised before the initiation of negotiations
- the property owner is provided with a written offer of just compensation
- the property owner is not coerced, as defined in Government Code Section 7267.5
- the owner is reimbursed for any expenses incidental to the transfer of title
- if any persons are displaced by the project, all appropriate relocation assistance services and benefits are provided.

An **Agreement Declaring Restrictive Covenants (ADRC)** (Exhibit 20-D) is required to protect the State’s interest in the property purchased with EEM funds. The agreement is recorded with the Grant Deed to the property being purchased (see Step 5 of Section 20.8 of this Chapter).

The Applicant may request that Caltrans deposit EEM payments directly into an escrow account when acquisition of “real property rights” is involved. The opening of the escrow with a Title Company or an Escrow Agency is the responsibility of the Applicant. The Applicant is solely responsible for paying the costs of these services (see Step 11 of Section 20.8 of this Chapter).

When an EEM project involves acquisition of “real property rights”, it is strongly recommended that the District Right of Way unit be contacted early in the project development process.

20.8 PROCEDURES FOLLOWING CTC ADOPTION OF EEM PROGRAM

The steps for processing EEM projects following CTC adoption of the EEM program are as follows:

1. **Reimbursable Project Development Work** - The Applicant may begin reimbursable preliminary work any time after the project is adopted into a State program. However, any project development work performed prior to the execution of the Applicant-State Agreement is done at the Applicant's risk.

2. **Request for Project Specific Allocation Vote for Funds by CTC (second vote)** -

Applicants should submit a request for the second vote to the DLAE when they are sufficiently far enough along in their design to award a construction contract within six months. Applicants must receive their second vote prior to the end of the program fiscal year (June 30). (Funding authority expires at the end of the EEM program fiscal year.) All second vote requests must be received by the DLAE no later than April 1 of the program fiscal year. This allows sufficient time for including the project vote on the June CTC agenda.

If there is a change in Applicant title, a notification document must be attached to the request for second vote. The document shall state that the transfer of all rights, responsibilities, payments, and title of the project applicant have been mutually agreed to (see Exhibit 20-E). Authorizing signatures for both the new and original applicants must appear on the notification document. This document is then signed by the DLAE and forwarded to the OLP for final approval.

3. **Agreements with Applicant**

An **Applicant-State Agreement** (Exhibit 20-C) is required for all projects receiving EEM program funds. This agreement:

- defines the project
- establishes funding commitments
- defines the applicable design standards, right of way acquisition procedures and construction standards/procedures
- defines specific roles and responsibilities for performing the work, management and maintenance of the property, records retention and audits

The Applicant-State Agreement must specify the: date, agreement number, project number (application number), and Applicant's name. The Applicant must complete Exhibit A of the Applicant-State Agreement for all EEM projects.

When an EEM project involves acquisition of “real property rights”, an **Agreement Declaring Restrictive Covenants (ADRC)** (Exhibit 20-D) is required to protect the State’s interest in the property purchased with EEM funds. The Applicant must complete Exhibits ADRC-A (Real Property Description) and ADRC-B (Description of Related Transportation Facilities) to this agreement. The agreement is recorded with the Grant Deed to the property being purchased (See Step 5). The Applicant may also request that State EEM funds be paid directly into an escrow account for the purposes of purchasing the EEM property (See Step 11).

Following the CTC second vote, the OLP - EEM Program Manager prepares and forwards the following project-related documents to the Applicant.

- one (1) copy of the CTC-stamped resolution for allocation of project funds
- two (2) original copies of the Applicant-State Agreement
- one (1) original copy of the ADRC (only for projects involving acquisition of “real property rights”)
- Financial Guidelines for Local Agency Reimbursement
- Policies and Procedures for Contract Development, Contract Administration and Reimbursement

If EEM projects **involving acquisition of “real property rights”** see **Step 5 and Exhibit 20-I** for processing procedure for the Applicant-State Agreement and the ADRC.

For EEM projects which do not involve acquisition of “real property rights”, both original Applicant-State Agreements must be signed by the Applicant, then returned to OLP.

The OLP forwards both original Applicant-State Agreements to Local Programs Accounting. Local Programs Accounting certifies the agreement, encumbers the funds and assigns an Expenditure Authorization (EA) number. The agreements are then returned to the OLP for final execution.

The Chief of Program Management for the OLP signs both original Applicant-State Agreements. One (1) original executed Applicant-State Agreement is returned to the Applicant. The remaining original Applicant-State Agreement is retained by the OLP and made part of Caltrans’ permanent files. A copy of the Applicant-State Agreement is returned to Local Programs Accounting and the DLAE.

4. **Capital Outlay Work** - Following execution of the Agreement by the State, capital outlay work may begin. However, the Applicant cannot invoice and be reimbursed for any work undertaken until Local Programs Accounting encumbers the funds and establishes an EA number for the project. Once the Applicant receives their copy of the fully executed agreement then they can submit invoices for reimbursement.

5. **Acquisition, Clearance and Improvements to Right of Way** - Legal and physical control of the right of way shall be acquired in accordance with applicable State laws and regulations prior to the Applicant's advertising for bids for construction or development of the project. The State provides reimbursement only for the purchase of right of way that is required for the project. When an Applicant acquires right of way that includes excess land, the cost of the excess portion must be excluded from the reimbursement requests submitted to Caltrans.

An ADRC (Exhibit 20-D) is required for all EEM projects that involve acquisition of "real property rights". A legal description of the entire project property (Exhibit ADRC-A) must be included in the agreement as well as an identification of the related transportation facility (Exhibit ADRC-B). This agreement protects the State's investment in the property acquisition should the property be sold or no longer used for the purpose intended as part of the EEM program. Please note that **all signatures on the Agreement Declaring Restrictive Covenants must be notarized** as this document will be recorded along with the grant deed when the property is purchased.

Notarization of this form qualifies it to be publicly recorded. After all of the issues and demands presented in the escrow are resolved, it is the escrow agent's duty to take both the executed Grant Deed and the original ADRC to the County Recorder's Office for recordation.

When acquisition of "real property rights" is involved, the Applicant must complete, sign and return the two original Applicant-State Agreements, the ADRC, a copy of the Grant Deed or a Preliminary Title Report (an approval) and Invoice for payment to the Caltrans DLAE. The Caltrans DLAE then forwards all the documents to the Caltrans District Right of Way unit for review and approval.

The District Right of Way Local Programs Coordinator must:

- assure the land acquired is a part of the approved project (Exhibit A of Applicant-State Agreement)
- assure the title is sufficient for the proposed use (see Exhibit ADRC-A of the ADRC)
- assure the settlement does not unreasonably exceed the appraised value for the property acquired
- assure the amount, when added to any previous payments for the project, does not exceed the amount approved by the CTC
- provide additional escrow instructions (by editing when an Applicant requests Caltrans to deposit EEM funds directly into an escrow account (see Step 11))
- approve the Invoice for payment.

After reviewing, concurring, and signing of the above documents by the Caltrans District Right of Way Local Programs Coordinator, a copy of the original escrow instructions and original ADRC are made and the original ADRC and escrow instructions are sent to the escrow company. The copies of both the ADRC and escrow instructions, along with the rest of the package, are returned to the DLAE.

The DLAE must then forward the following documents to the OLP, Attention: EEM Program Manager:

- two signed originals of the Applicant-State Agreement and one copy of the Agreement Declaring Restrictive Covenants
- a copy of the escrow instructions
- a copy of the Grant Deed (unrecorded) or Preliminary Title Report.
- a copy of the appraisal
- approved Invoice for payment (see Exhibit 20-F)
- if the warrant is to be picked-up by an Applicant courier, additional information and a photo identification must also be provided (see Step 12).

The above information is reviewed for completeness by the EEM Program Manager and the Applicant-State Agreement is executed by the Chief of Programs Management in the Office of Local Programs. The Agreements, a copy of the stamped CTC resolution, Invoice for payment, and request for payment into an escrow account, if applicable, are forwarded to Local Programs Accounting for processing.

Upon purchase of the EEM property, a copy of the recorded Grant Deed and the original ADRC are forwarded to the DLAE by the title company. The DLAE provides the District Right of Way with a copy of the recorded documents and then forwards the recorded documents to the EEM Program Manager

EEM Program Manager forwards a copy of the recorded Grant Deed and a copy of the recorded ADRC to the HQ Right of Way and Asset Management Program. EEM Program Manager retains a Certified copy of the Grant Deed and the original ADRC which become a part of Caltrans' permanent files.

If an EEM funded property is sold or no longer used for the intended EEM purpose and the State is reimbursed, a Notice of Revocation of Restrictive Covenants (see Exhibit 20-H) shall be properly prepared and processed for recordation by the Caltrans District Right of Way unit.

A step-by-step outline for processing Environmental Enhancement and Mitigation projects that involve acquisition of "real property rights" is provided in Exhibit 20-I.

6. **Award** - The Applicant is expected to award the construction contract within six months of the second vote (allocation of funds) by the CTC. The Caltrans District EEM Coordinator shall notify the OLP when projects cannot be made ready for project construction award within the time allowed. The Caltrans District EEM Coordinator shall indicate the reasons for the delay and provide the OLP with a revised project completion schedule.

The Applicant may request an extension, in writing, from the OLP. The extension may be granted if circumstances warrant. If not, funding allocation may be withdrawn and other projects may be considered for funding to ensure the timely expenditure of EEM program funds.

7. **Low Bids** - If the cost of a project decreases by reason of low bid or otherwise, the allocation of State funds will be decreased proportionately with a decrease in the Applicant's participating contributions.

- 8. Proposed Scope Changes** - In cases where the approved funding amount is less than the amount for which the Applicant originally applied, the Applicant is required to complete the project without downscoping it, unless specifically authorized in writing by the State Resources Agency. If the approved funding amount is less, the project will be completed by supplementing the project cost with another funding source or by finding a less costly way to complete the project.

In cases where the approved funding amount is more than the amount needed to complete the project, the remaining amount reverts back to the CTC. The Applicant may not expend the remaining amount on project features not included in the approved application.

No major change may be made to a project unless it is pursuant to an amendment to the project agreement duly executed by the State and the Applicant.

Where minor changes in scope are proposed, the OLP determines what constitutes a minor change and authorizes the changes in the project.

- 9. Inspection of Work and Recommendation of Payment** - All EEM projects on State-owned right of way shall be inspected by Caltrans District Landscape Architect to ensure that the Applicant complied with State design, construction standards, practices and with the conditions of all permits. If the inspection requires abilities or special knowledge that are outside the landscape function, the District Landscape Architect has the authority to request assistance from other Caltrans functions having the appropriate expertise.

For EEM work off the State-owned right of way, the Applicant is responsible for ensuring that the facility is constructed in accordance with local government design, construction standards, and practices. The DLAE will review the facility upon project completion to verify that the project was built consistent with the approved project application.

- 10. Invoice and Reimbursement Process** - Although the Budget Act allows the Applicant receiving State funds to complete reimbursable work and the actual reimbursement payment within two years following the fiscal year in which the CTC makes a funding allocation, it is the intent of the CTC that all funds allocated for the EEM Program be expended prior to the end of the first State fiscal year following the fiscal year during which funds were allocated. Requests for exceptions to this should be submitted to the EEM Program Manager in the OLP.

Local Programs Accounting processes the payments to EEM Applicants for EEM projects. The following requirements must be satisfied prior to reimbursement of eligible project costs.

- project must be on a stamped CTC resolution list of projects
- project must have executed an Applicant-State Agreement for the project
- Local Programs Accounting must have certified and encumbered State funds

- Applicant must prepare an original invoice, two (2) copies of the invoice and one (1) copy of back-up information for all progress and final invoices. Progress payment invoices are submitted directly to Local Programs Accounting and the final payment invoice is submitted to the DLAE. A sample invoice, including the Local Programs Accounting address, is included as Exhibit C of the Applicant-State Agreement.
- District Landscape Architect must inspect the work on State-owned right of way, or DLAE must verify project completion for work off State-owned right of way.
- DLAE must authorize payment of the final invoice
- Local Programs Accounting processes payment(s) of invoices through the State Controller's Office
- The payment of State funds is typically made upon completion of the work (At the option of the Applicant, progress payments can be arranged, however; no more often than monthly).
- Where project costs will be paid from a number of different sources (e.g., EEM, State Coastal Conservancy, State Land Commission, etc.), the invoice (whether for progress pay or full amount) will contain the pro rata share from each funding source.

11. Payment Directly to Escrow Company - The Applicant may request that Caltrans deposit EEM payments directly into an escrow account when acquisition of "real property rights" is involved. The opening of the escrow account with a Title Company or an Escrow Agency is the responsibility of the Applicant. The Applicant is solely responsible for paying the costs of these services.

The following procedures should be followed:

- The Applicant shall complete Exhibit A of the Applicant-State Agreement to include Section III, Remarks and Covenants (as follows) enabling the Applicant to provide pertinent information relative to the escrow account and title company.

III. Remarks and Covenants

Pursuant to the terms of Applicant-State Agreement No. _____, dated _____ and effective immediately, the _____ *(Name of Applicant)* requests and authorizes that the EEM fund warrants be made out in the name of the: _____ *(Name of Title Company)*, _____ *(Address of Title Company)*, _____ *(Name of Escrow Agent) for Escrow No. _____*, _____ *(Phone no.)*

- The Applicant must also prepare Exhibit ADRC-A (legal property description) and Exhibit ADRC-B (description of related transportation facility) in the ADRC. In addition, the Applicant must obtain a copy of the appraisal and the unexecuted Grant Deed or a Preliminary Title Report to the property.

- Upon payment of State EEM funds into the Applicant's escrow account and the terms of escrow being met, the escrow agent shall record the Grant Deed and Agreement Declaring Restrictive Covenants and then forward a copy of the recorded documents to the DLAE.

12. Project Completion - Upon completion of a project, the Applicant is responsible for preparing a Final Report of Expenditures and a Final Invoice (see Exhibit 20-C). For the contents of the Final Report of Expenditure, refer to Chapter 17 - Project Completion of the *Local Assistance Procedures Manual*. The Final Report of Expenditures and Final Invoice must be completed upon project completion and submitted to the DLAE. Both are submitted to the DLAE **prior** to April 30 of the fiscal year following the fiscal year the project was programmed. Failure to meet the April 30 date can result in non-payment of the final invoice.

13. Audit - Local agency expenditures of EEM program funds are subject to financial and compliance audits by the State Controllers Office and Caltrans Office of Audits and Security. The Applicant shall maintain an accurate and detailed record of the costs for its project. Such records shall be retained and made available for examination by the State's auditors for a minimum of four years after the Final Report of Expenditures is submitted to the State.

Local Programs Accounting is responsible for ensuring that any costs for which the Applicant has received payment and which are determined to be ineligible, under CFR 48, Federal Acquisition Regulation System, Chapter 1, Part 31, are repaid to the State by the Applicant.

14. Fees and Administrative Charges - This program is believed to be a benefit to Caltrans as well as the Applicants, therefore, all fees and administrative charges for Caltrans permits and inspection will be waived.

15. Maintenance and Operation of Project - The Department or agency having the responsibility for maintaining the project consistent with the application and agreement is responsible for ensuring that any property acquired, developed, rehabilitated, or restored with program funds is maintained, in the future, consistent with applicable provisions in the application and agreement.

Caltrans is responsible for approving any transfers in the management and maintenance responsibilities for the property.

In the event the property is not managed and maintained consistent with the application, the Applicant or its successor, at the discretion of the State, shall reimburse the State Highway Account an amount at least equal to the amount of the State's funding participation in the project.

If the property is sold, traded or otherwise put to any use other than as approved in the allocation for State funds, the Applicant, or its successor, at the discretion of the State, shall reimburse the State Highway Account an amount at least equal to the amount of the State's funding participation in the project or the pro rata fair market value of the property, including improvements, at the time of sale, whichever is higher.

EEM PROGRAM CRITICAL DATES(Dates shown apply to 1996-97 grant cycle, dates for future cycles will vary slightly)

<u>DATE</u>	<u>ACTIONS</u>
08-1-95	State Resources Agency mails Application Packet.
11-20-95	Applications due to State Resources Agency.
4 -96	State Resources Agency forwards four (4) copies of each Application to the California Transportation Commission (CTC). All project applicants will be notified of the status of their project at that time.
4-96	CTC provides three (3) copies of each Application to Caltrans Headquarters, Office of Local Programs.
4-96	Caltrans Headquarters, Office of Local Programs distributes one (1) copy of each application to the appropriate Caltrans District EEM Coordinator.
4-96	State Resource Agency publishes list of recommended projects. Applicants notified by letter.
4-96	CTC sends letter to all applicants on the "short list" requesting final approved copy of environmental document for the EEM project.
4-96 to 5-96	CTC, Caltrans Headquarters, Office of Local Programs, and Caltrans, District EEM Coordinators review projects recommended by Resources Agency.
5-96	Final deadline for submitting final approved environmental documents to CTC, if not included in original application.
7-96	CTC adopts Annual Program.
8-1-96	Caltrans Headquarters, Office of Local Programs transmits "CTC-Stamped" annual program to Caltrans District EEM Coordinators. Coordinators are advised to begin working with applicants in obtaining their allocation vote.
8-1-96 to 6-30-97	Period during which all allocation votes (2nd Votes) must be approved by the CTC and the Applicant-State Agreement signed.
2nd Vote + 6 months	Deadline for awarding a construction contract.
6-30-98	CTC intended deadline for expending State funds and for submitting final invoices to Caltrans Headquarters, Office of Local Programs Accounting.
6-30-99	Budget Act (legal) deadline for completing project construction and for expending State funds. All remaining funds will revert.
6-30-01	Deadline for monitoring plant establishment.

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SAMPLE RESOLUTION APPROVING AN EEM PROJECT

Resolution No: _____

RESOLUTION OF THE _____
(GOVERNING BODY)OF _____ APPROVING
(NONPROFIT ORGANIZATION/SPECIAL PURPOSE LOCAL AGENCY))

THE APPLICATION FOR GRANT FUNDS FOR THE ENVIRONMENTAL ENHANCEMENT AND

MITIGATION PROGRAM UNDER SECTION 164.56 OF THE STREETS AND HIGHWAYS CODE

FOR THE FOLLOWING PROJECT:

(PROJECT NAME)

WHEREAS, the Legislature of the State of California has enacted AB 471 (Chapter 106 of the Statutes of 1989), which is intended to provide \$10 million annually for a period of 10 years for grant funds to local, state and Federal agencies and nonprofit entities for projects to enhance the environment and mitigate the environmental impacts of modified or new public transportation facilities; and

WHEREAS, the Resources Agency has established the procedures and criteria for reviewing grant proposals and is required to submit to the California Transportation Commission a list of recommended projects from which the grant recipients will be selected; and

WHEREAS, said procedures and criteria established by the Resources Agency require a resolution certifying the approval of application by the applicant's governing body before submission of said application to the State; and

WHEREAS, the application contains assurances with which the applicant must comply ; and

WHEREAS, the applicant, if selected, will enter into an agreement with the State of California to carry out the environmental enhancement and mitigation project;

NOW, THEREFORE, BE IT RESOLVED THAT THE

(GOVERNING BODY)

1. Approves the filing of an application for the Environmental Enhancement and Mitigation Program for grant assistance.
2. Certifies that said applicant will make adequate provisions for operation and maintenance of the project.

3. Appoints _____ as agent of
(NAME AND TITLE)

the _____ to
(NONPROFIT ORGANIZATION/SPECIAL PURPOSE LOCAL AGENCY)

conduct all negotiations, execute and submit all documents, including, but not limited to applications, agreements, amendments, and payment requests, which may be necessary for the completion of the aforementioned project.

Approved and Adopted the _____ day of _____, 19 _____. I, the

undersigned, hereby certify that the foregoing Resolution Number _____ was duly

adopted by _____
(GOVERNING BODY)

Following roll call vote:

Ayes: _____

Noes: _____

Absent: _____

(CLERK/SECRETARY FOR THE GOVERNING BODY)

APPLICANT-STATE AGREEMENT NO. _____
ENVIRONMENTAL ENHANCEMENT AND MITIGATION PROGRAM

PROJECT NUMBER _____
 _____ FISCAL YEAR ALLOCATION _____

THIS AGREEMENT, made effective this _____ day of _____, 19____, by and between the _____, hereinafter referred to as "APPLICANT" and the State of California, acting by and through the California Department of Transportation (Caltrans), hereinafter referred to as "STATE."

WITNESSETH

WHEREAS, as provided by Streets and Highways Code Section 164.56, enacted as part of Assembly Bill 471 (Katz) in 1989, funds have been allocated to APPLICANT by the California Transportation Commission (CTC) after being recommended for funding by the Resources Agency for the project submitted by APPLICANT as described in the application; and

WHEREAS, STATE and APPLICANT desire to enter into an Agreement relative to fund transfers and cost sharing on the described projects,

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - Project Administration

1. The application submitted by APPLICANT and all conditions and assurances contained therein are made an express part of this Agreement. Should any conflict exist between the application and the Agreement, the Agreement shall prevail.
2. The project, or projects, described in Exhibit A, hereinafter referred to as "PROJECT," shall be acquired, developed, designed and constructed as provided in this agreement.
3. If PROJECT is on STATE-owned right-of-way, STATE design and construction standards and practices shall be used. If PROJECT is not on STATE-owned right-of-way, the local government design and construction standards and practices shall apply.

(For Caltrans LPA Use Only)

I hereby Certify upon my own personal knowledge that budgeted funds are available for this encumbrance.								
Caltrans Accounting Officer						Date:		\$
Chapter	Statutes	Item	Fiscal Year	Program	BC	Category	Fund Source	\$
Note to LPA, check Exhibit A - Part III, if applicable, for payee on warrant.								

Applicant-State Agreement for EEM Program

4. In cases where the approved fund transfer amount is less than the amount for which APPLICANT originally applied, APPLICANT is expected to complete PROJECT without downscoping it, unless specifically authorized to do so, in writing, by the State Resources Agency. This will be accomplished by APPLICANT supplementing PROJECT costs with another funding source or by finding a less costly way to complete the PROJECT.

5. The estimated cost of PROJECT is as shown in Exhibit A. APPLICANT may, with STATE approval, award a contract in an amount in excess of said estimate. It is understood, however, that the allocation of STATE funds for PROJECT will not exceed that limit set by Exhibit A.

6. In the event the estimated cost of PROJECT decreases by reason of low bids or otherwise, the allocation of STATE funds will be decreased proportionately with APPLICANT's decrease in participating contributions.

7. Minor non-substantive changes may be made in PROJECT as described in Exhibit A upon notice to STATE. No major change, however, may be made in said PROJECT except pursuant to an amendment to this Agreement duly executed by STATE and APPLICANT. STATE will determine what constitutes a minor change by accepting or rejecting the notice by APPLICANT of the intent to implement a specific minor change.

8. After completion and acceptance of PROJECT by STATE, STATE shall pay to APPLICANT, STATE's share of the cost of PROJECT within sixty (60) days after receipt of a signed invoice for payment submitted by APPLICANT. At the option of APPLICANT, monthly or quarterly pro rata progress payments may be made on a reimbursement basis upon submittal of invoices by APPLICANT and approval by STATE for PROJECT costs incurred. Pro rata payments will be based on the fund transfer amount in proportion to the total cost of PROJECT. An Invoice format document is included as Exhibit C.

9. If PROJECT involves work on the State highway system, it shall also be the subject of a separate standard form of encroachment permit between STATE and APPLICANT.

10. APPLICANT agrees to comply with the requirements of the FAIR EMPLOYMENT PRACTICES ADDENDUM (Exhibit B attached hereto) and further agrees that any agreement or service contract entered into by APPLICANT with a third party for performance of work connected with the PROJECT shall incorporate Exhibit B as a part of such agreement.

11. Within one hundred twenty (120) days after completion of all work under the Agreement, APPLICANT shall prepare and file with STATE four (4) copies of a final report of all expenditures on the project.

ARTICLE II - Rights-of-Way

1. The acquisition, clearance, and improvement of rights of way necessary for the development of PROJECT shall be the responsibility of APPLICANT. Right-of-way acquisition and clearance costs may be included as a participating item of total PROJECT costs.

2. APPLICANT shall perform all PROJECT right-of-way activities in accordance with applicable State laws and regulations unless the STATE determines, in writing, that the State Uniform Relocation Assistance and Real Property Acquisition Policies Act (Government Code Secs. 7260-7277) does not apply.

3. APPLICANT, as part of its PROJECT design responsibility, shall identify and locate all utility facilities within the PROJECT area. All utility facilities, including those not relocated or removed in advance of construction, shall be identified on PROJECT plans and specifications.

4. If any existing public and/or private utilities conflict with the construction of PROJECT, APPLICANT will make all necessary arrangements with the owners of such utilities for their protection, relocation, or removal. If utility relocation is required within STATE right-of-way, APPLICANT shall conform to STATE standards, policies and procedures. If utility relocation is outside of STATE right-of-way, APPLICANT shall conform with local government policies.

5. APPLICANT shall certify legal and physical control of the PROJECT right-of-way ready for construction, and that the right-of-way was acquired in accordance with applicable State laws and regulations, subject to review and concurrence by STATE, prior to the advertisement for bids for construction/development of PROJECT.

6. If right-of-way acquisition and clearance costs are included as a participating item of PROJECT costs, STATE shall provide funds only for purchase of the right-of-way required for PROJECT. If APPLICANT acquires right-of-way which includes excess land, STATE will not participate in the cost of the excess portion. In the event land initially acquired as part of PROJECT is declared excess at a later date, APPLICANT shall reimburse STATE, no later than one hundred twenty (120) days after PROJECT completion, for either the pro rata fair market value at the time of disposal or, if that property is retained by APPLICANT, the pro rata fair market value of the excess land. The pro rata fair market value shall be based on the fund transfer amount applied toward purchase of the property in proportion to the total purchase price of the property.

ARTICLE III - Safety

1. APPLICANT shall comply with OSHA regulations regarding necessary safety equipment or procedures. If work is within STATE right of way, APPLICANT shall also comply with safety instructions issued by the District Safety Officer and other STATE representatives. APPLICANT's and contractor's personnel shall see that all individuals wear white hard hats and orange safety vests at all times while working within STATE right of way.

2. Pursuant to the authority contained in Section 591 of the Vehicle Code, STATE has determined that within such areas as are within the limits of the PROJECT and are open to public traffic, APPLICANT shall comply with all the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. APPLICANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles when performing work within STATE right of way.

3. APPLICANT must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s) as outlined in California Labor Code Sections 6500 and 6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five feet or deeper.

ARTICLE IV - Inspection of Work

1. APPLICANT and any subcontractors shall permit STATE to review and inspect PROJECT activities at all reasonable times during the performance period of this Agreement including review and inspection on a daily basis.

Applicant-State Agreement for EEM Program

ARTICLE V - Equipment

Any equipment purchased as a result of this AGREEMENT is subject to the following:

1. APPLICANT shall maintain an inventory of all non expendable property. Non expendable property is defined as having a useful life of at least two years and an acquisition cost of \$500 or more.
2. If the purchased equipment needs replacement and is sold or traded in, the STATE shall receive a proper refund or credit.
3. At the conclusion of the AGREEMENT or if the AGREEMENT is terminated, the APPLICANT may either keep the equipment and credit the STATE in an amount equal to its fair market value or sell such equipment at the best price obtainable at a public or private sale in accordance with established STATE procedures, and credit the STATE in an amount equal to the sales price. If the APPLICANT elects to keep the equipment, fair market value shall be determined, at the APPLICANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to the State and the APPLICANT. If it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by the STATE.

ARTICLE VI - Management and Maintenance of Property

1. APPLICANT will manage and maintain, in the future, any property acquired, developed, rehabilitated, or restored with fund transfer amount. With STATE's prior approval, APPLICANT or its successors in interest may transfer the management and maintenance responsibilities in the property. If the property is not managed and maintained consistent with the application, APPLICANT or its successors in interest, at the discretion of STATE, shall reimburse STATE an amount at least equal to the amount of the STATE's funding participation in PROJECT.
2. All real property acquired with these funds shall be subject to an appropriate Title covenant approved by STATE. If the property is sold, traded or otherwise put to any use other than as approved in the Allocation for STATE funds, the State Highway Account, at the discretion of STATE, shall be reimbursed an amount at least equal to the amount of the STATE's funding participation in PROJECT or the pro rata fair market value of the property, including improvements, at the time of sale, whichever is higher. The pro rata fair market value shall be based on the fund transfer amount applied toward the purchase of the property and the design and construction of improvements in proportion to the total purchase price of the property and all improvements.

ARTICLE VII - Retention of Records/Audit Review Procedures

1. APPLICANT shall maintain an accurate and detailed record of costs for PROJECT. Such records shall be retained and made available to STATE's auditors for examination for a minimum period of four years from the date of final report of expenditures submitted to STATE. APPLICANT and its contractors agree that contract cost principles at least as restrictive as 48 CFR, Federal Acquisition Regulation System, Chapter 1, Part 31 shall be used to determine the allowability of individual items of costs. APPLICANT and its contractors also agree to comply with Federal procedures as set forth in 49 CFR, Part 18, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments. A clause to this effect shall be inserted by APPLICANT in each PROJECT sub-agreement.

2. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement shall be reviewed by the Chairperson of the Audit Review Committee (ARC). The ARC will consist of the Assistant Director, Audits & Security (Chairperson); Deputy Director of Transportation Engineering; the Chief Counsel, Legal Division or their designated alternates; and two representative from private industry will be advisory in nature only and will not have voting rights. Additional members or their alternates may serve on the ARC.

3. Not later than 30 days after issuance of the final audit report, APPLICANT may request a review by the ARC of unresolved audit issues. The request for review will be submitted in writing to the chairperson of the ARC. The request must contain detailed information of the factors involved in the dispute as well as justifications for reversal. A meeting by the ARC will be scheduled if the chairperson concurs that further review is warranted. After the meeting, the ARC will make recommendations to the Chief Deputy Director. The Chief Deputy Director will make the final decision for the STATE. The final decision will be made within three (3) months of receipt of the notification of dispute.

4. Neither the tendency of a dispute nor its consideration by STATE will excuse APPLICANT from full and timely performance of its obligations in accordance with the terms of this Agreement.

5. Any costs for which APPLICANT has received payment that are determined by subsequent audit to be ineligible under CFR 48, Federal Acquisition Regulation System, Chapter 1, Part 31, are to be repaid to STATE by APPLICANT.

6. Should APPLICANT fail to reimburse moneys due STATE within thirty (30) days of demand, or within such other period as may be agreed between the parties hereto, STATE is authorized to withhold future payments due APPLICANT from any source, including but not limited to, the State Treasurer, the State Controller and the CTC.

ARTICLE VIII - Miscellaneous Provisions

1. Neither STATE nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by APPLICANT under or in connection with any work, authority or jurisdiction delegated to APPLICANT under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, APPLICANT shall fully defend, indemnify and save harmless the State of California, all officers, and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by APPLICANT under or in connection with any work, authority or jurisdiction delegated to APPLICANT under this Agreement. STATE reserves the right to represent itself in any litigation in which STATE's interest are at stake.

2. APPLICANT, and the agents and employees of APPLICANT, in performance of this agreement, shall act in an independent capacity and not as officers, employees or agents of the STATE.

3. STATE may terminate this Agreement with APPLICANT should APPLICANT fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, STATE may proceed with the PROJECT work in any manner deemed proper by STATE. If STATE terminates this Agreement with APPLICANT, STATE shall pay APPLICANT the sum due APPLICANT under this Agreement prior to termination, provided, however, that the cost of PROJECT completion to STATE shall first be deducted from any sum due APPLICANT under this Agreement, and the balance, if any, shall be paid APPLICANT upon demand.

4. Without the written consent of STATE, this Agreement is not assignable by APPLICANT either in whole or in part.

Applicant-State Agreement for EEM Program

5. Time is of the essence in this Agreement.

6. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

7. The consideration to be paid APPLICANT, as provided herein, shall constitute full compensation for all of APPLICANT's costs and expenses incurred in the performance hereof, unless otherwise expressly so provided.

8. APPLICANT warrants, by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by APPLICANT for the purpose of securing business. For breach or violation of this warranty, STATE has the right to annul this without liability, pay only for the value of the work actually performed, or in its discretion, to deduct from the price of consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

9. In accordance with Public Contract Code Section 10296, APPLICANT hereby states under penalty or perjury that no more than one final unappealable finding of contempt of court by a Federal court has been issued against APPLICANT within the immediate preceding two-year period because of APPLICANT's failure to comply with an order of a Federal court that orders APPLICANT to comply with an order of the National Labor Relations Board.

10. APPLICANT shall disclose any financial, business, or other relationship with STATE or the California Transportation Commission (CTC) that may have an impact upon the outcome of this Agreement. APPLICANT shall also list current clients who may have a financial interest in the outcome of this Agreement.

11. APPLICANT hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.

12. APPLICANT warrants that this Agreement was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any STATE employee. For breach or violation of this warranty, STATE shall have the right, in its discretion, to terminate the Agreement without liability, to pay only for the work actually performed, or to deduct from the Agreement price or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

13. This Agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the State Legislature that may affect the provisions, terms, or funding of this Agreement in any manner.

14. This Agreement shall terminate on June 30, 199__ or upon completion of PROJECT, whichever is earlier in time, except that APPLICANT duties regarding operation, maintenance, and indemnification shall survive.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers.

STATE OF CALIFORNIA DEPARTMENT OF APPLICANT
TRANSPORTATION

By _____, Chief
Program Management, Office of Local Programs

1120 N Street
Sacramento, CA 95814

916-653-3581

By _____

APPLICANT Representative Name and Title

Address

Telephone No.

EXHIBIT A
PROJECT DESCRIPTION

APPLICANT:

I. Project Location and Description of Work Proposed:

Location:

Description of Work: (Complete and well defined)

II. Proposed Project Funding:

Cost:

Financing:

Federal Funds (if any)

APPLICANT Funds (if any)

State Funds (amount approved by CTC)

(On EEM projects involving acquisition of "real property rights", if the Applicant requests that State funds be deposited directly into an escrow account, insert the following)

III. Remarks and Covenants

Pursuant to the terms of Applicant-State Agreement No. _____, dated _____

and effective immediately, the _____ *(Name of Applicant)*

requests and authorizes that the EEM fund warrants be made out in the name of the

_____ *(Name of Title Company)* and mailed to

_____ *(Address of Title Company)*

_____ *(Phone no.)*

Attention: _____ *(Name of Escrow Agent)* for Escrow No. _____.

EXHIBIT B**FAIR EMPLOYMENT PRACTICES ADDENDUM**

1. In the performance of this Agreement, APPLICANT will not discriminate against any employee for employment because of race, sex, color, religion, ancestry, or national origin. APPLICANT will take affirmative action to ensure that employees are treated during employment, without regard to their race, sex, color, religion, ancestry, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. APPLICANT shall post in conspicuous places, available to employees for employment, notices to be provided by STATE setting forth the provisions of this Fair Employment section.

2. APPLICANT will permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment and Housing Commission, or any other agency of the State of California designated by the awarding authority, for the purposes of investigation to ascertain compliance with the Fair Employment section of this Agreement.

3. Remedies for Willful Violation:

- a) The State may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which APPLICANT was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that the APPLICANT has violated the Fair Employment Practices Act and had issued an order, under Labor Code Section 1426, which has become final, or obtained an injunction under Labor Code Section 1429.
- b) For willful violation of this Fair Employment Provision, STATE shall have the right to terminate this Agreement either in whole or in part, and any loss or damage sustained by STATE in securing the goods or services hereunder shall be borne and paid for by APPLICANT and by the surety under the performance bond, if any, and STATE may deduct from any moneys due or the thereafter may become due to APPLICANT, the difference between the price named in the Agreement and the actual cost thereof to STATE.

EXHIBIT C - INVOICE FORMAT

(Prepared by Applicant on Letterhead of APPLICANT)

Date of Invoice

(For Progress Invoice)
Department of Transportation
Accounting Service Center

Local Programs Accounting
Branch
P.O. Box 942874
Sacramento CA 94274-
1000

(For Final Invoice)
Name, District Director
Department of
Transportation
Street or P.O. Box Number

City, CA Zip Code
Attn.: **Name**
Local Assistance Engineer

Billing No.: **1, 2, or Final**
Invoice No: **Local Agency's Invoice**
Number

Tax Identification No.: **Agency IRS ID No.**
Date Accepted by City/County: **Final Date**
or "Ongoing" (if not final)

Project Location: **Project Limits**
Expenditure Authorization No.: **Project EA**
No.

Reimbursement for Environmental Enhancement and Mitigation funds is claimed pursuant to Applicant-State Agreement No. _____, Project No. _____, Executed on _____.

Description of work covered by this Invoice: _____

	Preliminary Engineering	Construction Engineering and Contingencies	Construction Contract
Total Costs	_____	_____	_____
Less Ineligible Costs	_____	_____	_____
Eligible Costs to Date	_____	_____	_____
Reimbursement Ratio	_____	_____	_____
Eligible Costs Subtotal	_____	_____	_____
Less: Amount Previously Claimed	_____	_____	_____
Total Amount This Invoice	_____	_____	_____

(For EEM projects involving acquisition of "real property rights", if the Applicant requests that State funds be deposited directly into an Escrow Account, then insert the following)

Pursuant to Exhibit A of above referenced Applicant-State Agreement, (Name of Applicant)
requests and authorizes that the Environmental Enhancement and Mitigation (EEM) fund warrants be made
out in the name of the (Title Company Address) Title Company and mailed to
(Title Company Address), Attention: (Name of Applicant)
for Escrow No. (Escrow No.).

I certify that the work covered by this Invoice has been completed in accordance with approved plans and specifications; the costs shown in this Invoice are true and correct; and the amount claimed is due and payable within the terms of the Agreement.

I further certify control of the right-of-way and that said control was acquired in accordance with applicable State laws and regulations (if applicable):

APPLICANT REPRESENTATIVE NAME & TITLE

District Landscape Architect *(if applicable)*

DISTRICT RIGHT-OF-WAY AGENT *(if applicable)*

Approved For Payment:

DISTRICT LOCAL ASSISTANCE EEM COORDINATOR

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Recording requested by and
when recorded mail to:

Attn.: *(District Local Assistance Engineer)*
Department of Transportation
State of California
(Address or P.O. Box)
(City, State, Zip)

(Space above for Recorder's use.)

Environmental Enhancement and Mitigation Program Agreement Declaring Restrictive Covenants (ADRC)

Project Number: _____

This Agreement Declaring Restrictive Covenants is entered into as of this _____ day of _____, 19____, by and between the _____, hereinafter referred to as "APPLICANT," and the State of California, acting by and through the California Department of Transportation (Caltrans), hereinafter referred to as "STATE."

WHEREAS, APPLICANT will be the owner of the real property acquired which is described in Exhibit ADRC-A, attached hereto and incorporated herein by this reference, attached hereto and incorporated herein by reference;

WHEREAS, APPLICANT acquires the real property described in Exhibit ADRC-A, hereinafter referred to as "REAL PROPERTY," for the public purpose of undertaking REAL PROPERTY as an environmental enhancement and mitigation project which is directly or indirectly related to the environmental impact of modifying existing transportation facilities or directly or indirectly related to the environmental impact of design, construction, or expansion of new transportation facilities described in Exhibit ADRC-B, hereinafter collectively referred to as "TRANSPORTATION FACILITIES;"

WHEREAS, STATE has allocated funds to APPLICANT for REAL PROPERTY as provided in section 164.56 of the Streets and Highways Code; and

WHEREAS, both APPLICANT and STATE desire and intend to restrict the REAL PROPERTY uses to environmental enhancement and mitigation purposes so that all of REAL PROPERTY and TRANSPORTATION FACILITIES shall be benefited and each successive owner of all or part of said REAL PROPERTY and TRANSPORTATION FACILITIES shall be benefited by the preservation of REAL PROPERTY for environmental enhancement and mitigation purposes.

NOW THEREFORE, in consideration of the mutual promises of the parties hereto, each to the other as covenantors and covenantees, and expressly for the substantial benefits to be derived therefrom, and to bind, their successors in interest, the said parties agree as follows:

Management and Maintenance of Property

1. APPLICANT will manage and maintain in the future the REAL PROPERTY acquired, developed, rehabilitated, or restored with funds allocated to APPLICANT pursuant to Applicant-State Agreement No. _____, Environmental Enhancement and Mitigation Program. With STATE's prior approval, APPLICANT, or its successors in interest, may modify or transfer these management and maintenance responsibilities in the REAL PROPERTY. If the REAL PROPERTY is

Agreement Declaring Restrictive Covenants

not managed and maintained consistent with the application, the State Highway Account, at the sole discretion of STATE, shall be reimbursed an amount at least equal to the amount of the STATE's funding participation in REAL PROPERTY or STATE's pro rata participation in REAL PROPERTY based on its then fair market value, whichever is higher.

2. All REAL PROPERTY acquired with STATE Environmental Enhancement and Mitigation Program funds shall be subject to this Agreement. If REAL PROPERTY is sold, traded, or otherwise put to any use other than as approved in the application for the allocation for STATE funds, the State Highway Account, at the sole discretion of STATE, shall be reimbursed an amount at least equal to the amount of STATE's funding participation in REAL PROPERTY or the pro rata fair market value of REAL PROPERTY, including improvements, at the time of sale, whichever is higher. The pro rata fair market value shall be based on the fund transfer amount applied toward the purchase of the property and the design and construction of improvements in proportion to the total purchase price of the property and all improvements.

Term

3. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them until revoked or amended pursuant to the Amendment and Revocation provisions of this AGREEMENT.

Assignment

4. Without the written consent of STATE, this AGREEMENT is not assignable in whole or in part by APPLICANT.

Amendment and Revocation

5. This AGREEMENT and any amendments to it may be amended in any respect by the execution by STATE of any instrument amending or revoking this AGREEMENT. The amending or revoking instrument shall make appropriate reference to this AGREEMENT and its amendments and shall be acknowledged and recorded in the office of the County Recorder of the counties in which the property is located.

Enforcement

6. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

Indemnification

7. Neither STATE nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by APPLICANT under or in connection with any work, authority or jurisdiction delegated to APPLICANT under this AGREEMENT. It is understood and agreed that, pursuant to Government Code Section 895.4, APPLICANT shall fully defend, indemnify and save harmless the State of California, all officers, and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined in Gov. Code #8108) occurring by reason of anything done or omitted to be done by APPLICANT under or in connection with any work, authority or jurisdiction delegated to APPLICANT under the AGREEMENT. STATE reserves the right to represent itself in any litigation in which STATE's interests are at stake.

Purpose of Agreement

8. This AGREEMENT is solely for recording purposes and shall not be construed to alter, modify, amend, or supplement the Applicant-State Agreement No. _____, Environmental Enhancement and Mitigation Program, or the application for funds as prepared by APPLICANT.

Severability

9. Invalidity of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereby execute this AGREEMENT by their duly authorized officers as of the date set forth above and agree to be bound hereby:

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

APPLICANT

By: _____
(District Right of Way, Local Programs Coordinator)

By: _____
(Applicant Representative Name)

(Title)

(Space below for Notary Public jurats or acknowledgments)

EXHIBIT ADRC-A
REAL PROPERTY DESCRIPTION

(For EEM projects involving acquisition of “real property rights”, insert the legal description of the property to be purchased as presented to the CTC prior the project allocation vote)

EXHIBIT ADRC-B

DESCRIPTION OF RELATED TRANSPORTATION FACILITIES

(For EEM projects involving acquisition of “real property rights”, insert the description of the related transportation facility consistent with the project application)

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Transfer of Title for EEM Applicant
(Applicant Letterhead)

Date: _____

California Department of Transportation
Design and Local Programs, EEM Coordinator
Office of State Landscape Architecture, M. S. 28
1120 N Street (95814)
P.O. Box 942874-0001
Sacramento, CA 94274-0001

Attention: _____ (Statewide EEM Program Manager)

Reference is made to Environmental Enhancement and Mitigation Program Project Number _____.
The project description is _____.

It is hereby mutually agreed that all rights, responsibilities, payments, and the title of APPLICANT for this project are to be transferred from _____ (Name of Former Applicant) to _____ (Name of New Applicant).

Please have all necessary documentation prepared with _____ (Name of New Applicant) listed as the sole responsible Applicant.

Signature_____
Signature_____
Title_____
Title_____
Agency/Entity (Name of Former Applicant)_____
Agency/Entity (Name of New Applicant)

APPROVED:

Chief, Program Management
Caltrans, Office of Local Programs
1120 N St.
Sacramento, CA 95814

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**SAMPLE COVER MEMO
INVOICE PAYMENT REQUEST
FOR PROJECTS INVOLVING ACQUISITION OF "REAL PROPERTY
RIGHTS"**

(Prepared By Applicant On Applicant Letterhead)

To: District Local Assistance Engineer
California Department of Transportation

Date: _____

From: *(Applicant Name and Address)*

Subject: *(EEM Project Name, County)*

Please find the following documents enclosed as requested:

1. Applicant-State Agreement No. _____, Environmental Enhancement and Mitigation Program.
2. Environmental Enhancement and Mitigation Program Agreement Declaring Restrictive Covenants - with NOTARIZED signatures (with Exhibit ADRC-A - Legal Description of Property, and Exhibit ADRC-B - Description of Related Transportation Facilities)
3. Invoice (On Applicant Letterhead)
4. Copy of Grant Deed (not recorded)

(Applicant Representative Name)

(Title)

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**SAMPLE INVOICE PAYMENT REQUEST
PREPARED BY DISTRICT**

State of California

Business, Transportation, and Housing Agency

Memorandum

To: Accounting Service Center
Local Programs Accounting Branch

Date: _____

File: _____

From: DEPARTMENT OF TRANSPORTATION
District _____

Subject: EEM Project No. _____
Applicant-State Agreement No. _____
Land Acquisition

Attached is the following information on the subject project:

1. A copy of Applicant-State Agreement No. _____, Environmental Enhancement and Mitigation Program.
2. Close of Escrow is _____ (date) _____.
3. A copy of Environmental Enhancement and Mitigation Program Agreement Declaring Restrictive Covenants - with NOTARIZED signatures (with Exhibit ADRC-A - Legal Description of Property, and Exhibit ADRC-B - Description of Related Transportation Facility.)
4. Invoice (on Applicant letterhead)
5. Copy of CTC - stamped Resolution allocating funds for project.

Local Assistance Engineer

Attachments

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Recording requested by and
when recorded mail to:

Attn.: *(District Local Assistance Engineer)*
Department of Transportation
State of California
(Address or P.O. Box)
(City, State, Zip Code)

(Space above for Recorder's use.)

Notice of Revocation of Restrictive Covenants

EEM Project Number _____

NOTICE IS HEREBY GIVEN, that the undersigned revokes certain Agreement Declaring Restrictive Covenants to the property described therein, caused to be recorded on _____, 199 ____, in Book ____, Page ____, of the Official Records of _____ County, State of California, and any amendments thereto, caused to be recorded _____, 199 ____, in Book ____, Page ____, of the Official Records of _____ County, State of California.

IN WITNESS WHEREOF, the parties hereby execute this AGREEMENT by their duly authorized officers as of the date set forth above and agree to be bound hereby:

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

APPLICANT

By: _____
State Representative Name

By: _____
Applicant Representative Name

Title

Title

EXHIBIT A
REAL PROPERTY DESCRIPTION

(Legal description of the Property to be Purchased as presented to CTC prior to Project Allocation Vote)

EXHIBIT B
TRANSPORTATION FACILITIES

(Description of the Related Transportation Facilities, consistent with Application)

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PROCEDURES FOR EEM PROJECTS INVOLVING ACQUISITION OF “REAL PROPERTY RIGHTS”

1. CTC adopts the annual EEM Program
2. CTC allocates funds for the specific EEM project
3. OLP receives CTC-stamped resolution of allocation of funds
4. OLP prepares and forwards the following materials to the Applicant:
 - one (1) copy of the CTC-Stamped Resolution allocating funds to the project
 - two (2) original copies of the Applicant-State Agreement (Exhibit 20-C)
 - one (1) original copy of the Agreement Declaring Restrictive Covenants (Exhibit 20-D)
 - Financial Guidelines for Local Agency Reimbursement
 - EEM Policies and Procedures for Contract Development, Contract Administration and Reimbursement.

Preparation of the **Applicant-State Agreement** includes:

- providing an Applicant-State Agreement number
- providing a Project Number (application number)
- stating the Applicant's name (must be consistent with CTC Resolution adopting EEM Program, if not, Exhibit 20-E “Transfer of Title for EEM Applicant” must be completed)
- Completing Exhibit A (Project Location and Description of Work) of the Applicant-State Agreement. If Applicant wishes that State EEM funds to be deposited directly into an escrow account, Section III “Remarks and Covenants” in Exhibit A, as follows, should be completed by Applicant:

“Pursuant to the terms of Applicant-State Agreement No. _____, dated _____
and effective immediately, the _____ (*Name of Applicant*)
requests and authorizes that the EEM fund warrants be made out in the name of the
_____ (*Name of Escrow Company*) and mailed to
_____ (*Escrow Address*)
Attention: _____ (*Name of Escrow Agent*), for Escrow No. _____.
Phone # _____.

Where project costs will be paid from a number of different sources (i.e., EEM, State Coastal Conservancy, State Land Commission, etc.,) invoices (whether for progress pay for full amount) must contain the pro rata share from each funding source.

Preparation of the **Agreement Declaring Restrictive Covenants** (ADRC) includes:

- providing the Project Number (application number) - (page 1)
- providing the Applicant-State Agreement Number - (page 1)
- Applicant's Name (must be consistent with CTC Resolution adopting EEM Program or refer to Exhibit 20-E “Transfer of Title for EEM Applicant”)
- Including blank Exhibits ADRC-A (Real Property Description) and ADRC-B (Description of Related Transportation Facilities) to this Agreement.

Procedures for EEM Acquisition of “real property rights” Projects

5. Applicant:

- Completes Exhibit A to Applicant-State Agreement showing funding sources and, if necessary, Section III, Remarks and Covenants
- Completes Exhibits ADRC-A (Real Property Description) and ADRC-B (Description of Related Transportation Facilities) to the Agreement Declaring Restrictive Covenants
- signs each original agreement discussed under Step 4. (**Signatures on the Agreement Declaring Restrictive Covenants must be notarized**)
- prepares Invoice (See Exhibit C of Applicant-State Agreement)
- obtains copy of unexecuted Grant Deed or Preliminary Title Report with legal description of property
- prepares cover letter to District Local Assistance Engineer (Exhibit 20-F)
- obtains copy of appraisal
- compiles required documents and sends entire package to District Local Assistance Engineer.

6. Caltrans District Local Assistance Engineer:

- Forwards entire package to District Right-of-Way unit

7. District Right-of-Way (Senior Right-of-Way Agent):

- reviews project description contained in Exhibit A of the Applicant-State Agreement and reviews Legal Description of Property to be purchased contained in Exhibit ADRC-A of the Agreement Declaring Restrictive Covenants, confirms that land to be acquired is a part of the approved project.
- assures title is sufficient for the proposed use
- drafts further instructions to escrow agent, as necessary
- assures the settlement does not unreasonably exceed the appraised value for the property acquired
- approves the Invoice for payment
- makes a copy of ADRC and escrow instructions and sends original ADRC and escrow instructions to escrow company
- returns rest of packet, and copy of ADRC and escrow instructions to District Local Assistance Engineer

8. Caltrans District Local Assistance Engineer forwards the following documents to Caltrans HQ OLP (EEM Program Manager) for processing:

- two (2) original Applicant-State Agreements and one (1) copy Agreements Declaring Restrictive Covenants
- Invoice (approved by District Right of Way)
- escrow instructions (if any)
- copy of unexecuted Grant Deed or Preliminary Title Report
- if the warrant is to be picked up by an Agency courier, additional information and photo I.D. of courier must be provided.

9. Caltrans HQ OLP (EEM Program Manager):

- reviews packet for completeness and forwards both original Applicant-State Agreements to LPA
- obtains signature of Chief of Program Management, Office of Local Programs

10. LPA:

- encumbers project funds
- assigns a project Expenditure Authorization (EA) number
- returns the agreements to OLP to be conformed

11. OLP:

- returns one (1) original of the Applicant-State Agreement to applicant
- conforms the original retained Applicant-State Agreement and forwards copies to the DLAE and LPA for continued processing

12. LPA:

- completes processing
- forwards to Accounts Payable for expedited payment.

13. Accounts Payable:

- processes request and forwards to State Controllers Office

14. State Controllers Office:

- sends check to Escrow Agent.

15. Escrow Agent:

- records the Grant Deed and Agreement Declaring Restrictive Covenants and sends to the DLAE.

16. District Local Assistance:

- the original **recorded** Grant Deed and Agreement Declaring Restrictive Covenants are forwarded to the Caltrans HQ OLP (EEM Program Manager)

17. OLP

- forwards the original **recorded** Grant Deed and Agreement Declaring Restrictive Covenants to the Headquarters Office of Right of Way Engineering and Operations Research.

18. Headquarters Right of Way and Asset Management Program.

- conforms the **recorded** Grant Deed and Agreement Declaring Restrictive Covenants

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